

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

Richard Kough,)	
)	
Plaintiff,)	Civil Action No.: 5:18-cv-00837-JMC
)	
v.)	
)	
Matthew Kalb, Russell Painter, Matthew)	
Simon, and Laura Caldwell,)	
)	
Defendants.)	
_____)	

ORDER

Before the court for review is the Magistrate Judge’s Report and Recommendation (“Report”) filed on April 29, 2019 (ECF No. 105). The court **ACCEPTS** the Magistrate Judge’s Report and incorporates it herein by reference. For the reasons set out in the Report, the court **GRANTS** Defendant Laura Caldwell, Matthew Kalb, Russell Painter, and Matthew Simon’s Motion for Summary Judgment (ECF No. 92) and **DISMISSES** this action *with prejudice* for failure to prosecute.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards, which this court incorporates herein without a full recitation. (ECF No. 105 at 1–2.) As brief background, on March 26, 2018, Plaintiff Richard Kough, proceeding pro se and in forma pauperis, commenced this 42 U.S.C. § 1983 action against Defendants. (ECF No. 1.) On January 11, 2019, Defendants filed a Motion for Summary Judgment. (ECF No. 92.) On that same day, the Magistrate Judge entered a *Roseboro*¹ order, advising Plaintiff of the summary judgment procedures and the consequences of

¹ In *Roseboro v. Garrison*, the United States Court of Appeals for the Fourth Circuit held that district courts are required to provide pro se litigants with an explanation of summary judgment procedures. 528 F.2d 309, 310 (4th Cir. 1975).

failing to adequately respond. (ECF No. 93.) However, despite being granted two extensions, Plaintiff failed to respond to Defendants' Motion. (ECF Nos. 95, 96, 102, 103.)

On April 29, 2019, the Magistrate Judge entered her Report. (ECF No. 105.) The Report recommends granting Defendants' Motion (ECF No. 92) and dismissing this action with prejudice for failure to prosecute because "Plaintiff has filed no response [to Defendants' Motion]. As such, it appears to the court that Plaintiff does not oppose Defendants' [M]otion and wishes to abandon his action." (*Id.* at 2 (citing *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b)).)

II. STANDARD OF REVIEW

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District Court of South Carolina. The Magistrate Judge only makes a recommendation to this court; the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This court engages in a de novo review of those portions of the Report and Recommendation to which the parties have made specific objections. *See* 28 U.S.C. § 636(b)(1). *See also* Fed. R. Civ. P. 72(b)(3). The court may accept, reject or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

III. DISCUSSION

On April 29, 2019, as part of the Report, the Magistrate Judge notified the parties of their right to file objections by May 13, 2019. (ECF No. 105-1.) Neither of the parties filed any objections to the Report by this date. In the absence of objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendations without modification. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Absent objections, the

court must only ensure that there is no clear error on the face of the record in order to accept the recommendations. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). If a party fails to file specific, written objections to the Report, the party forfeits the right to appeal the court's decision concerning the Report. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Accordingly, since none of the parties filed any objections to the Report, and the court observes no clear error on the face of the record, the court accepts the Magistrate Judge's Report. *See Diamond*, 416 F.3d at 315; *Camby*, 718 F.2d at 199.

IV. CONCLUSION

After a thorough and careful review of the record, the court finds the Magistrate Judge's Report and Recommendation provides an accurate summary of the facts and law in this case. Accordingly, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 105) and incorporates it herein by reference. For the reasons set out in the Report, the court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 92) and **DISMISSES** this action *with prejudice* for failure to prosecute.

IT IS SO ORDERED.



United States District Judge

May 16, 2019
Columbia, South Carolina